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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,005	07/16/2003	Jeffrey T. Mannion	11578-012001	1669
26161	7590	02/28/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			NOVOSAD, JENNIFER ELEANORE	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/622,005	Applicant(s) MANNION ET AL.	
	Examiner Jennifer E. Novosad	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-14,16-27 and 29-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7,9-14,16-27 and 29-59 is/are allowed.
- 6) ☒ Claim(s) 62 and 63 is/are rejected.
- 7) ☒ Claim(s) 60 and 61 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

This final Office action is in response to the amendment filed January 3, 2006 by which claims 1-7, 9-14, 16-27, 29-61 were amended and claims **62** and **63** were added.

Election/Restriction

Claims **1**, **62**, and **63** is generic and allowable. *Accordingly*, the restriction requirement as to the encompassed species is hereby withdrawn and claims 19-25, 35, 43-59, 60, and 61, directed to the non-elected species, are no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim.

With respect to claims 60 and 61, it is noted that these claims depend from claim **63** which has been rejected under Section 112, 2nd paragraph (as advanced below), but otherwise claim **63** is considered to be allowable (over the prior art).

Claim Objections

Claim 60 and 61 are objected to because of the following informalities:

Since a claim can only depend from a preceding claim, the dependencies of claims 60 and 61 should be changed. *In particular*, to correct this, it is **strongly** suggested that claims 60 and 61 be canceled, and new claims 64 and 65 be added, thereby being duplicates of claims 60 and 61, respectively, except the dependency of claim 65 should be changed to claim --64--.

Appropriate correction is required and is kindly requested by the examiner.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims **62** and **63** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "a ring portion of greater diameter than the rim formation of the predetermined container" in line 3 of claim 62 and line 4 of claim 63, renders the claims indefinite. *In particular*, a container is not an element of the claimed device and it is improper to seek to define claimed structure based on a comparison to some unclaimed element. In this case, the boundaries of the claim cannot be properly ascertained because one would not know whether their device infringed the instant claim until someone else later added a container. In other words, a device as defined in the claims would infringe the claim with one particular container while the exact same device would not infringe the claim when another container is used. *Accordingly*, the features of the device, itself, must be defined instead of relying upon a comparison with an ascertained element.

Allowable Subject Matter

Claims 1-7, 9-14, 16-27, and 29-59 are allowed.

Claims **62** and **63** would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and claims 60 and 61 are objected to as being dependent upon a rejected base claim. Please note the claim objection (advanced above) concerning claims 60 and 61.

Response to Arguments

Applicant's arguments, filed January 3, 2006, with respect to claim 1 have been fully considered and are persuasive. The Section 103 rejection of U.S. Patent No. 5, 077,231 (to Ingemann) has been withdrawn.

It is noted however that while applicant does not argue the patentability of the claims (in view of Ingemann '231) in the remarks filed January 3, 2006, the arguments therein are drawn to the discussion had in the interview held on November 7, 2005 with applicant, applicant's representative, the examiner, and the examiner's supervisor, by which the patentability of the claims over Ingemann were discussed. *Thus*, applicant's arguments filed January 3, 2006 are considered to be fully responsive to the non-final Office action mailed on August 5, 2005.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

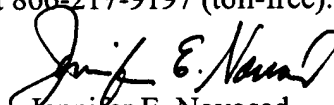
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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

February 24, 2006